



## BUSINESS LAW SECTION

The State Bar of California

March 22, 2000

William Kenefick, Esq., Acting Commissioner  
Department of Corporations  
1107 - 9th Street, Room 500  
Sacramento, CA 95814

**Comments Of The State Bar Of California Business Law Section's Franchise Law Committee**  
**to**  
**The California Department Of Corporation's**  
**Proposed Regulation 310.100.3**

Dear Commissioner Kenefick:

The executive committee of the Business Law Section of the State Bar of California respectfully submits for your consideration the attached comments of its Franchise Law Committee on Proposed Regulation 310.100.3 re Exemption for the Offer and Sale of a Franchise over the Internet.

If you have any questions concerning these comments, please contact either Jeffrey C. Selman, Co-Vice Chair of the Franchise Law Committee, (415) 677-5618, [jcs@severson.com](mailto:jcs@severson.com), or me at (916) 442-8018, [lddoyle@mindspring.com](mailto:lddoyle@mindspring.com).

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Thank you.

Best Regards,

Larry Doyle  
Chief Legislative Counsel

cc: Ann Yvonne Walker, Chair, Business Law Section  
Rhonda Nelson, Legislative Chair, Business Law Section  
Jeffrey C. Selman, Co-Vice Chair, Franchise Law Committee  
Paul Hokokian, Section LEGCOR Liaison  
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Dave Long, Director, State Bar Office of Research

**Comments Of The State Bar Of California Business Law Section's Franchise Law Committee  
to  
The California Department Of Corporation's  
Proposed Regulation 310.100.3**

The Franchise Law Committee ("FLC") of the State Bar of California submits the following comments to proposed Regulation 310.100.3:

The FLC generally supports the proposed Regulation. However, the FLC has certain concerns regarding the proposed Regulation as presently drafted.

First, the FLC believes that only offers of a franchise over the Internet should be exempt from registration under the Franchise Investment Law, and then, only if the offer is not being made or directed to residents of California and the offer contains a disclaimer to that effect. If a sale is made over the Internet, the sale is either being made to someone outside of the state, in which case the sale is not made "in this state" as that term is used in Corporations Code section 31013, and therefore the registration requirements of the Franchise Investment Law do not apply to the sale, or the sale is being made to someone within the state, in which case the registration requirements should apply. Therefore, the FLC believes that if adopted by the Department, the Regulation should replace the phrase "of an offer or sale of a franchise ("Internet Offer")" in subsection (a) with the phrase "of an offer to sell a franchise ("Internet Offer")," which is the language contained in NASAA's proposed Regulation.

Second, the FLC is concerned that there may be confusion arising from the fact that the proposed Regulation provides in subsection (a) for an exemption to the registration provisions of the Franchise Investment Law while at the same time in subsection (a)(3) predicated the existence of the exemption upon the requirement that franchises sold here in California be registered. The FLC believes that any such confusion can be removed by dropping the concept of exemption from the Regulation. Instead, the FLC recommends that the Regulation be written to add to the list contained in Corporations Code section 31013(c) of what does not constitute an "offer to sell" made "in this state." Section 31013(c) provides as follows:

- (c) An offer to sell is not made in this state merely because (1) the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which has had more than two-thirds of its circulation outside this state during the past 12 months, or (2) a radio or television program originating outside this state is received in this state.

The FLC proposes that the Regulation add that an Internet Offer is similarly not an "offer to sell" made "in this state" provided:

- (1) The Internet Offer indicates, directly or indirectly, that the franchise is not being offered to the residents of the State of California; and
- (2) The Internet Offer is not otherwise directed to any person in California by or on behalf of the franchisor or anyone acting with the franchisor's knowledge.

Furthermore, an additional concern of the FLC is that although as presently drafted, the proposed Regulation exempts Internet Offers from the registration requirements of the Franchise Investment Law, it is unclear whether the Internet Offer is still an advertisement subject to the review requirements of Corporations Code section 31156. Although the FLC believes that an Internet Offer would not be subject to these requirements, it also believes its' proposed revision to the Regulation makes clear that section 31156 does not apply because there would be no

offering of a franchise in this state.

Third, the FLC is also concerned about a closely related issue: namely, the question of whether the advertising review requirements of section 31156 apply to the Web sites of franchisors that are registered in California. Recently, some California franchise examiners in the Department have taken the position that the advertising review requirements do apply to these Web sites.

Many Web sites are updated on a daily or weekly basis. In addition, many franchisors are registered nationwide. If each registration state were to require administrative review of each revision to a franchisor's Web site, the regulatory burden might become a problem for franchisors and franchise examiners alike. It is also possible that regulatory requirements of various states regulating a single Web site might conflict. Although the FLC does not yet have a proposal to deal with this concern, we wish to call the Department's attention to the fact that it exists.

The contact person of the FLC for these Comments is Jeffrey C. Selman, Co-Vice Chair of the Franchise Law Committee, (415) 677-5618, [jcs@severson.com](mailto:jcs@severson.com).